

1 JON M. SANDS
2 Federal Public Defender
3 District of Arizona
4 850 W. Adams, Suite 201
5 Phoenix, Arizona 85007
6 Telephone: 602-382-2700

7 MARK RUMOLD, Cal. Bar #279060
8 Asst. Federal Public Defender
9 Attorney for Defendant
10 mark_rumold@fd.org

11 IN THE UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 United States of America,
14 Plaintiff,
15 vs.
16 Donald Day, Jr.,
17 Defendant.

CR-23-08132-PCT-JJT

**NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF
DEFENDANT'S SECOND MOTION TO
DISMISS (Dkt 41).**

18 Defendant Donald Day, Jr., through undersigned counsel, respectfully provides the
19 Court notice of the Ninth Circuit's recent decision in *United States v. Duarte*, No. 22-
20 50048 (attached as Ex. 1), issued on May 9, 2024.

21 In *Duarte*, the Ninth Circuit concluded that 18 U.S.C. § 922(g)(1) violates the
22 Second Amendment as applied to Mr. Duarte, an individual convicted of five prior
23 felonies.

24 *Duarte* is the latest in a series of decisions to recognize that § 922(g)(1) is
25 unconstitutional, either on its face or as applied to specific defendants. *See, e.g., Range*
26 *v. Att'y Gen.*, 69 F.4th 96 (3d Cir. 2023) (en banc); *United States v. Bullock*, ___ F. Supp.
27 3d ___, No. 3:18-cr-165, 2023 WL 4232309 (S.D. Miss. June 28, 2023); *United States v.*
28 *Neal*, ___ F. Supp. 3d ___, No. 20-CR-335 (N.D. Ill. Feb. 7, 2024); *United States v.*

1 *Prince*, __ F. Supp. 3d __, No. 22-CR-240 (N.D. Ill. Nov. 2, 2023); *Williams v.*
 2 *Garland*, __ F. Supp. 3d __, No. 17-cv-2641 (E.D. Pa. Nov. 14, 2023); *United States v.*
 3 *Williams*, __ F. Supp. 3d __, No. 23-cr-20201 (E.D. Mich. Feb. 22, 2024); *United States*
 4 *v. Harper*, __ F. Supp. 3d __, No. 21-cr-0236 (M.D. Pa. Sep. 1, 2023); *United States v.*
 5 *Hostettler*, __ F. Supp. 3d __, No. 23-cr-00654 (N.D. Oh. Apr. 10, 2024); *United States*
 6 *v. Jacobs*, __ F. Supp. 3d __, No. 23-cr-79 (N.D. W. Va. Apr. 18, 2024); *United States*
 7 *v. Jones*, __ F. Supp. 3d __, No. 23-cr-74 (S.D. Miss. Jan. 8, 2024); *United States v.*
 8 *LeBlanc*, __ F. Supp. 3d __, No. 23-cr-00045 (M.D. La. Dec. 19, 2023); *United States v.*
 9 *Quailes*, __ F. Supp. 3d __, No. 21-cr-0176 (M.D. Pa. Aug. 22, 2023); *United States v.*
 10 *Raphael Williams*, __ F. Supp. 3d __, No. 23-cr-20199 (E.D. Mich. Apr. 30, 2024);
 11 *United States v. Taylor*, __ F. Supp. 3d __, No. 23-cr-40001 (S.D. Ill. Jan. 22, 2024);
 12 *United States v. Forbis*, __ F. Supp. 3d __, No. 23-cr-133 (N.D. Okla. Aug. 17, 2023);
 13 *United States v. Griffin*, __ F. Supp. 3d __, No. 21-cr-00693 (N.D. Ill. Nov. 30, 2023);
 14 *see also Linton v. Bonta*, __ F. Supp. 3d __, No. 18-cv-07653 (N.D. Cal. Feb. 28, 2024)
 15 (striking down similar state ban).

16 Unlike those other decisions, however, *Duarte* is controlling authority here.

17 In its decision, the Ninth Circuit recognized—as Mr. Day has argued, *see* Reply at
 18 2-3 (Dkt. 55)—that the Supreme Court’s decision in *Bruen* abrogated prior Circuit
 19 precedent, *United States v. Vongxay*, upholding § 922(g)(1). *See* Opinion at 8-22. *Duarte*
 20 likewise recognized that the Second Amendment’s plain language encompasses the
 21 conduct at issue here—an individual (even one convicted of prior felonies) possessing
 22 firearms for purposes of self-defense. *See* Opinion at 22-33. And *Duarte* rejected the
 23 claim that, given Mr. Duarte’s prior felony convictions, a categorical, lifetime ban on the
 24 possession of firearms worked by § 922(g)(1) is supported by a “distinctly similar”
 25 historical analogue. *See* Opinion at 35-63.

26 *Duarte* therefore compels the dismissal of Count 3. In this case, Mr. Day is accused
 27 of possessing guns and ammunition, at his home, for purposes of self-defense. The
 28

1 government alleges Mr. Day has prior felony convictions—the most recent of which is
2 34 years old. But in the decades since, Mr. Day has had no subsequent arrests or
3 convictions. The government has not offered a “distinctly similar” historical analogue to
4 justify the lifetime ban on the possession of firearms it seeks to enforce here.

5 Accordingly, Court 3 should be dismissed.

6
7 Respectfully submitted: May 17, 2024.

8 JON M. SANDS
9 Federal Public Defender

10 /s/ Mark Rumold
11 Mark Rumold
12 Asst. Federal Public Defender
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28